

GENERAL TERMS AND CONDITIONS

("GTC")

for

Supply of Equipment and Services

by

special melting **INTECO** *technologies*

INTECO special melting technologies GmbH
registered under FN 72888p,
Wiener Straße 25a,
A-8600 Bruck an der Mur, Austria, EUROPA

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1. DEFINITIONS

Unless the context otherwise requires, the following words shall have the following meanings assigned to them in this Article 1:

- 1.1 **"Buyer"** shall mean the Party that receives an offer from the Seller or places an order to acquire goods or services with the Seller or enters into a Contract with the Seller.
- 1.2 **"Confidential Information"** shall mean any confidential or proprietary information or data, written or oral or in any other form, concerning the Project, the business operations, plans, drawings, Plant and know-how documentations, software, products, processes, technology, strategies, facilities, research, finances, customers, legal affairs, pricing, information systems, trade secrets, development plans, marketing information, commercial information, properties, environmental considerations, suppliers, technical information, raw material usage, business methods, personnel, sales or similar confidential or proprietary information or data of or belonging to any Party or its respective parent company, subsidiary or affiliate. The term "Confidential Information", as used in this Contract, shall not include information that (a) is already in a Party's legal possession, as evidenced by the written, dated documentation of such Party and provided that such information is not known by the said Party to be subject to another confidentiality agreement, (b) becomes generally available to the public other than as a result of disclosure by the recipient Party or its representatives in violation of this Contract or (c) is required to be disclosed by any law or regulation or by the degree of any competent tribunal, provided that the receiving Party required to make such disclosure shall limit its disclosure to the information or data required to be disclosed and shall make reasonable efforts to give maximum possible notice to the disclosing Party prior to such disclosure and assist the disclosing Party in seeking protection of the information or data to be disclosed. The Party who refers to these exceptions bears the burden of proof.
- 1.3 **"Contract"** shall mean the contract concluded between Buyer and Seller with all its Annexes and this GTC as an integral part of the Contract. In case of any divergence of interpretation between this GTC and the Contract, the Contract shall prevail.
- 1.4 **"Contract Price"** shall mean the total amount to be paid by the Buyer to the Seller according to the Contract.
- 1.5 **"CPT"** means the commercial term "Carriage Paid To" to the place of delivery, defined in accordance with the provisions of the International Rules for the Interpretation of International Commercial Terms (INCOTERMS 2010).
- 1.6 **"Days", "Weeks" and "Month"** shall mean calendar days, weeks and month reckoned according to the Gregorian calendar.
- 1.7 **"Effective Date"** shall mean the date on which the Contract comes into effect.
- 1.8 **"Equipment"** shall mean the mechanical equipment, electrical equipment, materials and auxiliary equipment supplied by the Seller as specified in the Offer.
- 1.9 **"Last Main Shipment"** shall be deemed on the date of the last shipment of Main Equipment as stated in the Offer.
- 1.10 **"Main Equipment"** shall mean Equipment with exception of subsequent deliveries as personal computers, spare parts etc.
- 1.11 **"Offer"** shall mean the offer of the Seller together with this GTC as an integrated part of the offer.
- 1.12 **"Party"** shall mean the Seller or the Buyer, **"Parties"** shall mean both together.
- 1.13 **"Seller"** shall mean INTECO special melting technologies GmbH, FN 72888p, Wiener Straße 25a, A-8600 Bruck an der Mur, Austria, Europe.
- 1.14 **"EUR"** shall mean the currency Euro within the European Union.

2. GENERAL PROVISIONS

- 2.1 These GTC shall apply to the present and all subsequent Contracts and Offers on the delivery of Equipment and Services between the Buyer and the Seller in business-to-business relationships exclusively.
- 2.2 Conflicting, differing or supplementing terms and conditions of the Buyer are not accepted and shall not bind the Seller, even if the Seller does not explicitly object to them or if the Seller unconditionally renders performance or accepts payments.
- 2.3 Any deviations from these GTC or any agreement shall only become valid and binding by the written confirmation of the Seller.

- 2.4 The Buyer shall be entitled to the non-exclusive use of any delivered standard software in unmodified form for use only with the agreed Equipment. Unless otherwise agreed or indicated, e.g. on the data media or in the software documentation, the Buyer shall be entitled to create two back-up copies.

3. PRICE

- 3.1 The Contract Price as specified in the Offer shall be considered in all respects as firm, fixed and not subject to adjustments unless otherwise expressly agreed. The Price does not include the Value Added Taxes ("VAT"), which shall be paid additionally by the Buyer at the rates valid at the time of invoicing, if required by law.
- 3.2 The Contract Price does not include any costs for transport, insurance, packaging, taxes, duties and other charges unless otherwise agreed in the Offer.
- 3.3 In the event of any delays related to the Buyer's obligations and responsibilities in the Project, which are beyond the control of the Seller causing the Time Schedule to fall behind by more than three (3) Months, then any part of the Contract Price that has yet to be paid after the three (3) Months delay period, whether due for payment at that time or not, will be increased each additional day of delay by the amount of 0.02 % (zero point zero two percent) of the outstanding sum. Claims by the Seller for damages shall remain unaffected.
- 3.4 In the event of any essential changes being made to the scope, nature, design data, material, construction and time schedule specified in the Contract, the Seller reserves the right of Price revisions, which shall also take into account cost variations resulting from any changes of the Contract time schedule. Further, any costs arising from any circumstances for which the Seller cannot be held responsible, such as disturbances during the execution of work due to operational conditions prevailing at site or due to Force Majeure shall be charged separately.

4. PAYMENT TERMS

- 4.1 For the payment to be made, the Buyer will establish an irrevocable, divisible and transferable and if requested reconfirmed Letter of Credit (L/C) for 100 % (hundred percent) of the Contract price through an advising bank acceptable to the Seller; the beneficiary of the said Letter of Credit shall be the Seller. The Letter of Credit shall be opened in favor of the Seller and shall be payable to the Seller at the counters of an Austrian first class bank. The Letter of Credit shall be valid for the full period of time necessary (plus 3 (three) months as safety duration) to effect Contract Payment. The Letter of Credit will allow payments for partial shipments or partial deliveries of services. All costs, bank charges or other fees related to the Letter of Credit will be paid by the Buyer.
- 4.2 The Buyer shall pay invoices in full within 14 (fourteen) Days from the date of receipt of the Seller's invoice and after all the conditions stipulated in the Offer and the correspondent Contract, in particular those regarding the provision of proper documentation, have been complied with. Payment shall be made to the bank account of the Seller.
- 4.3 Payments by the Buyer are considered as being fulfilled when they have been credited for free disposal on the bank account of the Seller's Bank.
- 4.4 If a the Buyer fails to make any payment due to the Seller by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 12% (twelve percent) per annum.

5. TECHNICAL DOCUMENTS / DRAWINGS

- 5.1 The Seller shall provide the Buyer with designs, drawings, specifications, schedules and bills of quantities as may be necessary to enable the Buyer to carry out manufacturing and Erection. These documents will be specified in the Contract.
- 5.2 The Seller shall be entitled to subcontract parts of his obligations of the Contract to a Subcontractor.

6. DELIVERY AND PACKING

- 6.1 The final Main Shipment of the Equipment will take place in accordance with the delivery schedule as agreed on in the Contract.
- 6.2 The delivery will be effected under condition that:
- a) the Contract has become effective,
 - b) all local permits to execute the work are received and
 - c) execution of the Contract is granted on an uninterrupted basis.

- 6.3 Any modification in design desired by the Buyer or demanded by any authority during the execution of the Contract may require an appropriate extension of the delivery schedule and the completion time.
- 6.4 In the event the Buyer requests changes to the delivery schedule, as specified in the Contract, the Seller reserves the right to make price changes.
- 6.5 The Seller shall deliver the Equipment on the basis of CPT (INCOTERMS 2010) to the place of delivery, in accordance with the delivery schedule. Partial deliveries are allowed.
- 6.6 Unless otherwise agreed, packing will be invoiced separately to the Buyer.

7. INSURANCE

- 7.1 The Buyer shall carry all necessary Erection all risks insurance and shall, with the cooperation and assistance of the Seller, do its best to minimize the uninsured risks throughout the Erection period of the Plant after the arrival of the cargo at the Site.
- 7.2 In the event a claim for indemnification of loss and/or damage against above mentioned insurance becomes necessary, both Parties shall assist and cooperate with each other to promptly take up the matter with the insurance company and shall extend necessary assistance to have the damaged or lost Equipment or relevant services replaced or repaired as promptly as possible.

8. WARRANTIES

- 8.1 The Seller warrants that all the Equipment supplied by the Seller is, except for normal wear and tear, be at time of delivery new and free from defects, be of first class workmanship and materials and show no defects due to faulty design, materials or workmanship, under normal operating conditions.
- 8.2 The Seller's obligations under the aforesaid warranties shall be effective for twelve (12) Months from the date when the Final Acceptance Certificate (FAC) is issued or for eighteen (18) Months after Last Main Shipment whichever occurs first (hereinafter referred to as the "Warranty Period"). If, during the aforesaid Warranty Period, any Equipment fails to meet the warranties as provided for in Article 8.1 hereof and the Buyer informs the Seller immediately in writing after the defect occurs, the Seller shall, at his own expense and choice, repair, make good, replace or modify the Equipment at the Site with all possible speed. The replaced items shall be warranted for further 12 (twelve) Months.
- 8.3 If the Seller does not commence the correction of such defects within thirty (30) Days from the date of receipt of notice from the Buyer or does not complete the said correction with reasonable diligence and within a reasonable time, the Buyer may, at his option, correct the defects at the Seller's risk and expense. The Seller shall reimburse the expense incurred by the Buyer for remedy of such defects within thirty (30) Days from the date of receipt of the Buyer's invoice.
- 8.4 The Seller shall not be responsible and these warranties shall not apply, if the Equipment has been subjected to any of the following:
 - a) damages in transit, improper storage or handling, incorrect or negligent operations or improper maintenance;
 - b) any alternations made otherwise than by or with the prior consent of the Seller; and
 - c) normal tear and wear.

9. TITLE AND RISK

- 9.1 The title to and the risk for any damage in the Equipment shall pass from the Seller to the Buyer at the date of the agreed INCOTERMS 2010 in this Contract at 00.00 hours.

10. VARIATION

- 10.1 Any variations in, addition or amendments to the Contract ("Variations") are subject to a written agreement between the Parties and the approval of the respective governments of the Buyer and the Seller, if applicable.
- 10.2 If the Buyer desires any Variations of the Contract, notice in writing shall be given by the Buyer so as to enable the Seller to make necessary arrangements and in case the Equipment is already manufactured or in the course of manufacture, or any matters completed or drawings or patterns made require alteration, the costs thereof shall be paid by the Buyer to the Seller. In this case, a reasonable time for the extension of delivery shall be granted, all extra costs due to Variations shall be paid by the Buyer.
- 10.3 Minor and insubstantial variations which do not affect price or delivery shall be made by written consent between the Parties hereto but shall not require the approval referred to the above.

11. PROPRIETARY RIGHTS / PATENTS

- 11.1 The Seller shall indemnify and hold the Buyer harmless against all proximate costs, actions, claims and demands brought by a third party by reason of, or in consequence of, any infringement by the Equipment or parts thereof that have been supplied by the Seller as a result of engineering services or any patent, design patent, trademark or copyright.
- 11.2 In the event that any claim is made of action is brought against the Buyer relating to such infringement, the Buyer shall promptly notify the Seller thereof and the Seller, at his own option, may request the assistance of the Buyer and can conduct, on the behalf of the Buyer, all negotiations for settlement of such dispute or litigation as may arise therefrom.

12. OWNERSHIP OF DRAWINGS, PLANS AND SPECIFICATIONS

- 12.1 All drawings, plans, specifications and similar documents developed or/and supplied by the Seller to the Buyer shall be the Seller's property. Such documents shall only be used by the Buyer according to this Contract.
- 12.2 The Seller grants the Buyer an irrevocable and limited right to use such drawings and documentation of the Plant delivered under this Contract only as agreed according to this Contract.
- 12.3 The Buyer ensures that all persons having access to such documents as mentioned in this Article 12 or any copies thereof, shall be bound by these provisions.
- 12.4 In the case of any violation of this Article 12, the Buyer shall pay to the Seller liquidated damages in the amount of EUR 1 million (in words: one million Euro) per case, without prejudice to the Seller's right to claim compensation from the Buyer.

13. TAXES AND DUTIES

- 13.1 The Seller shall pay all the customs duties and tariffs for export of the Equipment assessed or imposed on the Seller by the government or other competent authority of the Seller's country in relation to the Contract.
- 13.2 The Buyer shall pay and bear all bank charges, taxes and duties, including customs duties and including VAT related to the import of the Equipment, assessed or imposed on the Buyer by the government or other competent authority of the Buyer's country in relation to the Contract.

14. REMINDERS AND COLLECTION COSTS

- 14.1 In case of delay of the payment the Buyer is obliged to pay all pre-procedural costs as for reminders, professional fees for lawyers and/or collection agencies without prejudice to the Seller's right to claim compensation from the Buyer.

15. CLAIMS, LIABILITY, PERSONAL INJURY AND NON SOLICITATION

- 15.1 The Parties are not entitled to forward claims and demands other than as specified in this GTC or in the Contract.
- 15.2 The Seller shall only be liable for damage or losses to Buyer provided such damage or loss was caused by the Seller's officers or employees in an intentional or grossly negligent manner. For the sake of clarity the Seller shall not be liable for damage or losses caused in a slight negligent manner by its officers, employees or subcontractors.
- 15.3 Notwithstanding anything stated in the Contract, the Seller shall under no circumstances be liable for loss of profits, indirect damages, consequential damages or losses, as well as including but not limited to, loss of use, loss of profit, loss of production, loss of revenues, cost of capital, increased cost connected with the interruption of operation suffered or incurred by the Buyer for whatever reason.
- 15.4 In case performance by the Seller under the Contract causes death or injury to persons of the Buyer or third party, provided the Seller shall be solely liable therefore, the Seller shall indemnify the Buyer and hold the Buyer harmless according to his respective third party liability insurance.
- 15.5 The Buyer shall refrain from soliciting, hiring or otherwise employing (direct or indirect) employees, representatives, consultants or other agents of the Seller during the effectiveness of this Contract and for a period of five (5) years after termination of this Contract.
Notwithstanding any claims for damages asserted by the Seller against the Buyer, the Buyer agrees to pay to the Seller immediately liquidated damages of 100 % (hundred percent) of the annual amount, the Buy-

er pays to this person, but not less than EUR 100.000,00 (one hundred thousand Euros) per breach of the non solicitation obligation in this Article 15.5. The foregoing shall be without prejudice to the Sellers' right to assert claims for damages in excess of the liquidated damages. The Buyer bears the burden of proof.

- 15.6 For each violation of this non solicitation obligation the Buyer agrees to pay liquidated damages of EUR 100% (one hundred percent) of the annual income but at least EUR 100.000,00 (one hundred thousand), which the Buyer pays this person, immediately to the Seller. The Seller's right to claim compensation is not affected in such case. The Buyer bears the burden of proof.

16. PRODUCT LIABILITY

- 16.1 Recourse claims are excluded except the Buyer proves that the mistake is in the sphere of the Seller and was at least gross negligent.

17. CONFIDENTIALITY

- 17.1 Confidential Information are all company internal and intimate information, data and documents in oral, written or any other form of a Party or its affiliates.
- 17.2 The Parties agree that Confidential Information is only allowed to use in connection with an offer and realization of a Contract and those Confidential Information are strictly confidential. Each Party will undertake all necessary steps to provide disclosure of Confidential Information to third parties and shall also impose these confidential obligations evidently to all its employees as well as to its other agents.
- 17.3 This Contract shall not apply to Confidential Information that (a) is generally known to the public at the time of disclosure or becomes generally known through no wrongful act or/and breach of this Contract on the part of the receiving Party, (b) is independently developed by the receiving Party without reference to or reliance upon the Confidential information, or (c) is required to be disclosed by any law or regulation or by the degree of any competent tribunal. The Party who refers to these exceptions bears the burden of proof.
- 17.4 Confidential Information is exclusive property of the disclosing Party. The receiving Party gains no rights or claims on such Confidential Information.
- 17.5 All documents, data and drafts that the Seller provides for the Buyer are exclusively allowed to use for examination of the offer and execution of the Contract as well as maintenance and repair works of the facility according to the Contract. Accordingly the Buyer has no right to completely or partially copy, change, reproduce or disclose such documents, data and drafts to third parties without written agreement of the Seller.
- 17.6 In case of any violation of this Article 17, the violating Party has to pay liquidated damages of EUR 100.000,00 (one hundred thousand) for every violation of this Article 17 immediately to the injured Party without prejudice to the injured Party's right to compensate damages. The violating Party bears the burden of proof.
- 17.7 The obligations of this Article 17 shall survive the termination of the Contract unlimited.

18. FORCE MAJEURE

- 18.1 Neither Party of this Contract shall be responsible for failing to perform an obligation under the Contract to the extent that it is caused by a Force Majeure Event provided that such Party:
- a) gives prompt written notice to the other Party describing the Force Majeure Event including its known or anticipated impact and expected duration and
 - b) takes all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as possible;
- 18.2 The occurrence and duration of a Force Majeure Event, if circumstances allow it, shall be as possible established by a document issued by the Chamber of Trade and Commerce of the country in which the incident took place. Documentation regarding the occurrence, character and duration of the Force Majeure Event shall be submitted within 30 (thirty) Days after the initial notification of the other Party under Article 18.1 of this GTC. Failing proper documentation of the Force Majeure Event without significant reason, the Party affected shall be forfeited from referring to it as an argument of exemption from liability.
- 18.3 Force majeure hereunder shall be defined as any of the following events: war, preparation for war, act of terrorism, blockade, revolution, insurrection, mobilization, civil commotions, riots, strike, act of terrorism, sabotage, inevitable accident, lockout, act of governmental authorities, Act of God, plague, freight embar-

go, EU or governmental regulations, earthquake, tidal wave, typhoon, storm, fire, explosion, flood or any condition of a similar nature beyond the control of the Parties hereto.

- 18.4 If a Force Majeure Event continues more than 180 (one hundred eighty) Days, the Party not directly affected by the Force Majeure Event shall be entitled to terminate the remaining part of the Contract with immediate effect by giving notice by registered courier mail to the other Party.
- 18.5 Neither Party shall be liable for payment of any compensations including penalties, liquidated damages or interest for any payment delayed in the event of occurrence of Force Majeure.
- 18.6 For the sake of clarity in case of termination of the Contract in accordance with this Article 18 the Seller is entitled to account all manufactured, commissioned, delivered and invoiced Equipment to the Buyer.

19. EFFECTIVE DATE OF CONTRACT

- 19.1 The Contract shall become effective on the date on which all of the following conditions have been fulfilled:
 - a) The Contract has been signed by both Parties;
 - b) Receipt of the down payment by the Seller in accordance with this Contract;
 - c) Opening and making operative of the Letter of Credit (L/C) of a first class bank acceptable to the Seller in accordance with this Contract;
 - d) Receipt of the Export License to be issued by the Austrian Government or of a Certificate issued by the Seller stating no Export License is required.
- 19.2 The Parties shall try their best to make the Contract become effective as soon as possible.

20. TERMINATION

- 20.1 In the event of a considerable breach of the Contract, the dissatisfied Party shall be entitled to terminate ahead of schedule the Contract with immediate effect, if the breach fails to be cured within 3 (three) Months after a written notification of breach has been addressed to the other Party by registered courier mail.
- 20.2 In case of delay of acceptance or other significant reasons such as bankruptcy of the Buyer, rejection of bankruptcy in default of asset as well as delay of payment by the Buyer, the Seller is entitled to withdraw from the Contract, as it has not yet been fully performed by the Parties. The Seller's delivering obligation is not effective if there are any delays of payment by the Buyer.
- 20.3 In case of the authorized withdraw of the Contract by the Seller, the Buyer has to pay within 14 (fourteen) days compensation for liquidated damages of 30 % (thirty percent) of the gross quantity of orders (including taxes) as well as the difference of the actually incurred damage.
- 20.4 In case of the unauthorized withdraw of the Contract by the Buyer or is the Buyer seeking for termination of the Contract, the Seller has the choice to insist on fulfillment of the Contract or to agree on the termination of the Contract. In the latter case the Buyer is obliged to pay compensation for liquidated damages of 30 % (thirty percent) of the gross quantity orders (including taxes) as well as the difference of the actually incurred damage within 14 (fourteen) days.

21. GOVERNING LAW AND ARBITRATION

- 21.1 The applicable law to the Contract is solely the law of Austria. Should there be any modifications in the applicable law during the implementation of the contract, such modifications shall apply.
- 21.2 Any differences or disputes arising out of or in connection with the Offer or the Contract including any questions regarding the existence, validity or termination of the Agreement during the term of the Agreement or thereafter, shall be settled by an amicable effort of both Parties.
- 21.3 An attempt to arrive a settlement shall be deemed to have failed as soon as one of the Parties so notifies the other Party thereof in writing and the dispute shall be finally settled by arbitration.
- 21.4 All disputes arising out of or in connection with the Contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce (ICC) and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. Each Party hereby agrees to bear its own legal costs incurred in the arbitration. The English language shall be used in the arbitration and the place of arbitration shall be in Vienna, Austria.

22. MISCELLANEOUS

- 22.1 All present and future contracts with the Buyer are based on this GTC unless a deviation therefrom is specifically provided for in the Contract. This GTC shall be deemed accepted by the Buyer at the latest from confirmation of the Order.
- 22.2 In case of any divergence of interpretation between this GTC and the Contract, the Contract shall prevail. In case of any divergence of interpretation between the Contract and its Annexes, the Contract shall prevail.
- 22.3 Any gaps in these GTC shall be governed solely by applicable statutory provisions. The Buyer's terms and conditions (e.g. quotations, terms and conditions of sale) shall only be valid if they have been expressly approved in writing by the Seller.
- 22.4 Any additions or modifications to this GTC or the Contract shall be valid only if they are made in writing and signed by the duly authorized representatives of the Parties and being provided, that written and signed agreements may validly be exchanged by e-mail, fax, mail or courier.
- 22.5 English shall be the official language in the performance of the duties hereunder and any correspondence, documents, manuals, instructions, notices and other communications between the Parties. If the Contract is drawn in English and a language other than English, the English text shall prevail for all parts of the Contract, in case of any divergence of interpretation.
- 22.6 No Party shall be deemed to have waived any right under the Contract or any provision thereof unless such waiver is duly executed in writing and acknowledged by the Party to be charged with such waiver.
- 22.7 If a particular provision of this GTC, the Offer or the Contract is legally ineffective or unfeasible for any legal reason than unless the basic intention of the Parties is substantially jeopardized thereby the validity of the remaining provisions shall not be effective thereby. In such case the Parties shall come to an agreement approximating as closely as possible the arrangement originally envisaged on the Contract.
- 22.8 The Buyer is obliged to immediately inform the Seller if the Buyer's address is changing, otherwise explanations by the Seller count as legally valid if they are sent to the last known address of the Buyer.